

EVELYN C. ALANDY-DY,
Petitioner,

-versus-

SANYO SHOKAI, LTD.,
Respondent- Registrant.

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IPC No. 14-2013-00008
Cancellation of:
Registration No. 4-2011-014341
Issued on: 26 July 2012
TM: "EVEX BY KRIZIA"

X-----X

NOTICE OF DECISION

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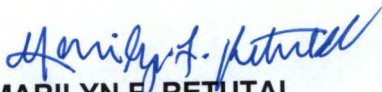
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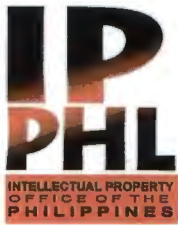
GREETINGS:

Please be informed that Decision No. 2017 - 148 dated April 27, 2017 (copy enclosed) was promulgated in the above entitled case.

Pursuant to Section 2, Rule 9 of the IPOP HL Memorandum Circular No. 16-007 series of 2016, any party may appeal the decision to the Director of the Bureau of Legal Affairs within ten (10) days after receipt of the decision together with the payment of applicable fees.

Taguig City, May 02, 2017.


MARILYN F. RETUTAL
IPRS IV
Bureau of Legal Affairs



EVELYN C. ALANDY-DY,

Petitioner,

-versus-

SANYO SHOKAI, LTD.

Respondent-Registrant.

IPC No. 14-2013-00008

Cancellation of:

Registration No. 4-2011-014341

Issued On: 26 July 2012

Trademark: "EVEX BY KRIZIA"

Decision No. 2017- 148

x-----x

DECISION

EVELYN C. ALANDY-DY¹ ("Petitioner") filed a petition to cancel Trademark Registration No. 4-2011-014341. The registration, issued in favor of Sanyo Shokai, Ltd.² ("Respondent-Registrant"), covers the mark "EVEX BY KRIZIA" for use on "handbags; boston bags; shoulder bags; business card cases; clutch bags; tote bags; credit card cases; vanity cases (not fitted); key cases [leatherware]; wallets; umbrellas; clothing for domestic pets; carry on bags; traveling trunks" under Class 18 and "men's suits; ladies' suits, pants and rain coats; cardigans; sweaters; trousers; skirts; men's wear; jackets; blouses; polo shirts; tee-shirts; jeans; sweat shirts; one-piece dress; coats; scarves [scarfs]; shawls; mufflers; neckties; socks and stockings; stockings; tights; blouson; swimsuits; underwear [underclothing]; pajamas; headgear for wear; children's wear; bandanas [neckerchiefs]; gloves [clothing]; belts for clothing; garters; sock suspenders; waistbands for clothing; suspenders [braces]; men's shoes; ladies' shoes; children's shoes; boots; sandals" under Class 25 of the International Classification of Goods and Services.³

The Petitioner alleges:

x x x

"1. Respondent-Registrant's registration of the trademark EVEX BY KRIZIA bearing Registration No. 4-2011-014341 submitted in evidence as Exhibit 'P', issued on 7-26-2012, is being cancelled in accordance with Section 151(b) and Section 236 of Republic Act No. 8293, otherwise known as the Intellectual Property Code of the Philippines as the trademark KRIZIA AND K DEVICE has been used and owned by Petitioner Evelyn C. Alandy-Dy who first used the trademark in commerce in the Philippines in 1988 in accordance with Section 2-a of Republic Act 166, the law then existing when KRIZIA AND K DEVICE was first adopted and used by Petitioner in 1988 continuously up to the present. Republic Act No. 8293 took effect only on January 1, 1998.

¹With address at No. 20 Sto. Tomas Street, Urdaneta Village, Makati City.

²With address at 1-2-20, Kaigan, Minato-ku, Tokyo 105-022 Japan.

³The Nice Classification is a classification of goods and services for the purpose of registering trademark and service marks, based on a multilateral treaty administered by the World Intellectual Property Organization. The treaty is called the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks concluded in 1957.

"1.1. In this regard, Section 236 of Republic Act 8293 or the Intellectual Property Code provides that the rights in marks acquired in good faith prior to the effective date of Rep. Act No. 8293 is preserved under such law. It states that:

x x x

"1.2. On the other hand, Sec. '2-A of Rep. Act No. 166 which was the law existing in 1988 when Petitioner first adopted and used the trademark 'KRIZIA AND K DEVICE' and before effectivity of Rep. Act No. 8293 provides as follows:

x x x

"1.3. By actual use of the mark 'KRIZIA AND K DEVICE' in commerce in the Philippines since January, 1988, Petitioner Evelyn C. Alandy-Dy, has acquired ownership of the trademark 'KRIZIA AND K DEVICE' and the subsequent registration of such mark 'KRIZIA AND K DEVICE' on August 28, 2000 in her favor confirms her title or ownership over the same. The mere failure of Petitioner to comply with a formal requirement in the filing of her 5th anniversary Affidavit of Use does not divest her of such ownership because she has been continuously using the mark 'KRIZIA AND K DEVICE' since January, 1988 up to the present.

"1.4. Respondent Sanyo Shokai Ltd, is not entitled to register the trademark EVEX BY KRIZIA, because at the time of filing of its application and even at the time of registration thereof, the trademark KRIZIA AND K DEVICE is owned and has been continuously used by Petitioner Evelyn C. Alandy-Dy since 1988 continuously up to the present.

"2. Petitioner is the real and rightful owner of the mark 'KRIZIA AND K DEVICE' for ladies wear such as dresses, pants and blouses, being the prior adopter and actual user of the mark 'KRIZIA AND K DEVICE' in commerce in the Philippines since 1988 up to the present. The PRIOR ADOPTER AND ACTUAL USER of the mark in commerce in the Philippines is the basis for acquiring ownership over the mark, as provided under Section 2-A which provision of law was not repealed by Rep. Act No. 8293 as it not inconsistent with any provision of R.A. No. 8293.

"2.1. In this regard, Sec. 239 of R.A. No. 8293 provides that-

x x x

"3. On the other hand, Respondent's trademark 'EVEX BY KRIZIA' is not being used in commerce in the Philippines and therefore, Respondent is NOT the rightful owner thereof, considering that the mark 'KRIZIA AND K DEVICE' has already been exclusively appropriated, owned and has been continuously used by the Petitioner in commerce in the Philippines as early as 1988 to present and even in 2011 when Respondent, Sanyo Shokai Ltd. filed its trademark application for EVEX BY KRIZIA up to the present when subject registration was fraudulently registered by Respondent.

"3.1. It is a fundamental principle in Philippine Trademark Law that actual use in commerce in the Philippines is a pre-requisite to the acquisition of ownership of a trademark or tradename. Adoption alone of a trademark would not give rise to the exclusive right thereto. Such right grows out of their actual use. Mere adoption is not use.

"3.2. In regards to actual use of trademarks in commerce, Section 2-A of Republic Act No. 166 clearly provides that:

x x x

"3.3. As aptly enunciated by the Supreme Court in the case of Kabushiki Kaisha Isetan vs. Intermediate Appellate Court, et al. G.R. No. 75420, November 15, 1991:

x x x

"3.4. Respondent Sanyo Shokai Ltd, has not actually used the trademark EVEX BY KRIZIA in commerce in the Philippines. As shown by the Certificate of Registration, there is no manner of use and no Declaration of Actual Use filed by Respondent Sanyo Shokai Ltd. in connection with the use of its trademark 'EVEX BY KRIZIA' in commerce in the Philippines. As per records of the Bureau of Trademarks, Respondent, Sanyo Shokai Ltd. only filed its application for EVEX BY KRIZIA on December 1, 2011 and that it has not filed any Declaration of Actual Use (DAU). This will show that Respondent, Sanyo Shokai Ltd. has not used the trademark EVEX BY KRIZIA in commerce in the Philippines.

"4. Petitioner Evelyn C. Alandy-Dy was the first to adopt and actually use in commerce in the Philippines the mark 'KRIZIA AND K DEVICE' since 1988 up to the present, so that Petitioner has already established a good name and goodwill for the use of the mark 'KRIZIA AND K DEVICE' for her ladies wear products as will be shown by the evidence.

"5. The ownership acquired by petitioner Evelyn C. Alandy-Dy over the mark 'KRIZIA AND K DEVICE' by virtue of her actual use in commerce in the Philippines since 1988 up to the present has been preserved under Section 236 of Republic Act No. 8293 and protected under Section 168 of the same law.

x x x

"6. Petitioner Evelyn C. Alandy-Dy is the registered owner of the mark 'KRIZIA AND K DEVICE' used on ladies wear such as dresses, pants, and blouses and that she has authorized the following companies to use, distribute and sell her ladies wear products bearing the trademark 'KRIZIA AND K DEVICE' (Exhibit 'B-1') in all SM outlets in the Philippines since 1988 up to the present:

x x x

"7. Petitioner has authorized the abovementioned companies successively because everytime there is a reorganization in the company, it has to change the company name, so from Fashion and Stitches, the company was changed to Apparel House, then to KKL Fashion Inc., then to Dansig Trading, Inc. and finally to Bimelech, Inc. At present, Petitioner is the Chief Executive Officer (CEO) of Bimelech, Inc.

"8. Petitioner has actually been using, distributing and selling ladies wear such as dresses, pants and blouses as shown by Summary of Sales prepared and duly signed by Dalla Ralla, the Accounting In-Charge of Bimelech Inc., showing sales of ladies wear bearing the trademark 'KRIZIA AND K DEVICE' in all SM outlets from 1988 up to 2012 (Exhibits 'G', 'G-1' to 'G-5').

"9. Petitioner's KRIZIA AND K DEVICE for ladies wear has also been advertised in newspapers such as the Philippine Graphic and Woman's Home Companion and also advertised television, particularly in ABS-CBN Broadcasting Corporation Television Studio 23 under Contract No. BO1011155143 consisting of the following:

x x x

"9.1. In 2005, KRIZIA has also been recipient of awards such as THE MOST OUTSTANDING AND FASHIONABLE WOMEN'S APPAREL BRAND, a national award given by Philippine Marketing Excellence (Exhibit 'M');

"10. Petitioner Evelyn C. Alandy_Dy filed the Affidavit of Use on February 16, 2006 together with the corresponding receipt from the IPO (Exhibits 'C' and 'C-1') for her 5th anniversary registration of her KRIZIA AND K DEVICE trademark registered under Certificate of Registration No. 4-1988-067141 issued on 28 August 2000, which Affidavit of Use was due for filing from August 28, 2005 to August 28, 2006. The said Affidavit of Use was acted upon by Records Officer Marjorie Pescasio (Exhibit 'D') who required Petitioner to submit the list of establishments where 'KRIZIA AND DEVICE' are being sold and likewise, to submit a notarized Affidavit. Petitioner complied to said official action by submitting a notarized Supplemental Affidavit with the list of the establishments attached as (Annex 'A') (Exhibits 'E' and 'E-1') on April 20, 2006 showing the SM outlets or establishments where KRIZIA AND K DEVICE are being sold, within the reglementary period to file the Affidavit of Use, and that is, from August 28, 2005 to August 28, 2006, hence Petitioner was surprised to know that her registration for 'KRIZIA AND K DEVICE' was cancelled without valid reason and despite compliance. Moreover, Petitioner was not even informed of the reason why her registration was cancelled.

x x x

The Petitioner's evidence consists of the Affidavit of Evelyn C. Alandy-Dy, owner of the trademark KRIZIA and K DEVICE; copy of Certificate of Registration No. 4-1988-067141 for the trademark KRIZIA AND K DEVICE issued on 28 August 2000; sample cloth and paper labels or tags showing the trademark KRIZIA AND K DEVICE; copy of Affidavit of Use filed on 16 February 2006 for Certificate of Reg. No. 4-1988-067141; copy of official action dated 23 March 2006; copy of supplemental affidavit of Evelyn C. Alandy Dy dated 19 April 2006; copy of Application No. 4-2012-002397 for the mark KRIZIA filed on 27 February 2012; copy of summary of sales of KRIZIA AND K DEVICE ladies wear from 1988 to 2012; the name and signature of Dalla Ralla, accounting-in-charge appearing on the summary sales; copy of advertisement of KRIZIA ladies wear in Woman's Home Companion, Vol. XIX No. 16 Issue of March 13, 1991; copy of advertisement of KRIZIA ladies wear in Philippine Graphic, Vol. 2 No. 16 Issue of November 4, 1991; copies of ABS-CBN Broadcasting Corporation Television Studio 23 Ads under Contract B01011155143 for the following periods: 3/19/2011-3/25/2011, 3/26/2011-3/31/2011, 4/2/2011-4/8/2011, 4/9/2011-4/15/2011, 4/16/2011-4/22/2011, 4/30/2011-4/30/2011, 5/14/2011-5/20/2011, 5/7/2011-5/13/2011 and 5/21/2011-5/27/2011; copy of Certification from Goldever Printing dated 7 December 2012; copy of Certification from Quality Labels, Inc. dated 12 December 2012; copy of the Philippine Marketing Excellence Award in 2005 given to

KRIZIA as the Most Outstanding Fashionable Women's Apparel Brand; copy of Certificate of Appreciation from Centro Escolar University to KRIZIA for being a sponsor during the School's Mr. & Ms AM 2008; copies of Certificates from SM Harrison awarded to KRIZIA for achieving its sales plan for 2010, 2011 and 2012; copy of Affidavit of Dalla Ralla, accounting-in-charge of Bimelech Inc. notarized on 23 January 2013 and copy of Certificate of Registration No. 4-2011-014341 issued on 26 January 2012 for the trademark EVEX BY KRIZIA AND K DEVICE in favor of Sanyo Shokai Ltd.⁴

This Bureau issued a Notice to Answer and served a copy thereof upon Respondent-Registrant on 22 February 2013. Said Respondent-Registrant, however, did not file an Answer.

Should Trademark Registration No. 4-2011-014341 be cancelled?

Sec. 151, IP Code, states in part that:

Sec. 151. *Cancellation.* – 151.1. A petition to cancel a registration of a mark under this Act may be filed with the Bureau of Legal Affairs by any person who believes that he is or will be damaged by the registration of a mark under this Act as follows:

(a) Within five (5) years from the date of the registration of the mark under this Act. x x x

This provision allows any person to file a petition to cancel a trademark registration if that person believes that he would be damaged by the registration. Once filed, the cancellation proceeding becomes, basically, a review of the trademark registration in question to determine if the legal requirements for registration have been satisfied and if the maintenance or continuance of Respondent-Registrant's trademark in the principal register would damage Petitioner.⁵

Section 138 of the IP Code provides:

Sec. 138. *Certificates of Registration.* – A certificate of registration of a mark shall be *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

⁴Marked as Exhibits "A" to "P", inclusive.

⁵Sec. 154 of the IP Code provides:

154. *Cancellation of Registration.* – If the Bureau of Legal Affairs finds that a case for cancellation has been made out, it shall order the cancellation of the registration. When the order or judgment becomes final, any right conferred by such registration upon the registrant or any person in interest of record shall terminate. Notice of cancellation shall be published in the IPO Gazette. (Sec. 19, R.A. No. 166a)

The trademark registration issued in favor of respondent-registrant constitutes prima facie evidence, hence, it is not conclusive and may be overturned by controverting evidence. Because of the presumption of validity, the burden of proof rests on Petitioner to prove that the registration of subject mark was invalid and that the original registrant is not the owner of the subject mark. Petitioner is required to submit substantial evidence to rebut the *prima facie* presumption of validity of Certificate of Registration No. 4-2012-010215.

Section 5 Rule 133 of the Rules of Court provides:

Sec. 5. *Substantial evidence.* - In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (n)"


Substantial evidences has been defined as follow:

"Due process in administrative process requires that evidences must be substantial, and substantial evidence means evidence that a reasonable mind might accept as adequate to support a conclusion." (China City Restaurant Corporation vs. NLRC, 217 SCRA 443 (1993) citing Associated Labor Union vs. NLRC, 189 SCRA 743 (1990))

"Substantial evidence which is the quantum of evidence required to establish a fact before administrative and quasi-judicial bodies is that amount of relevant evidence as a reasonable mind might accept as adequate to support a conclusion. It means such evidence which affords a substantial basis from which the fact in issue can be reasonably inferred" (Rubberworld (Phils.), Inc. vs. National Labor Relations Commissions, 175 SCRA 450); or "as adequate to justify a conclusion" (Remo Foods, Inc. vs. National Labor Relations Commission, 249 SCRA 379; Fulgeura vs. Linsangan, 251 SCRA 264).

In the case of Emerald Garment Manufacturing Corporation vs. Court of Appeals, 251 SCRA 600 (1995), the Supreme Court ruled:

"The findings of facts of the Director of Patents are conclusive upon the Supreme Court provided they are supported by substantial evidence citing "Unno Commercial Enterprises, Inc. vs. General Milling Corp., 120 SCRA 804 91983; Kabushiki Isetan vs. Intermediate Appellate Court, 203 SCRA 583 (1991)."



It is also a basic rule of evidence that each party must prove his affirmative allegations. If he claims a right granted by law, he must prove his claim by competent evidence, relying on the strength of his own evidence and not upon the weaknesses of that of his opponent. The test for determining on whom the burden of proof lies is found in the result of an inquiry as to which party would be successful if no evidence of such matters will be given." (Lolita Lopez vs. Bodega City, et. al., G.R. No. 155731, 03 September 2007, citing Martinez vs. National Labor Relation Commission, 339 Phil. 176, 183 (1997); Rufina Patis Factory vs. Alusitain, G.R. No. 146202, 14 July 2004, 434 SCRA 418, 428; Imperial Victory Shipping Agency vs. National Labor Relation Commission, G.R. No. 84672, 05 August 1991, 200 SCRA 178, 185)

In evaluating the facts of the record and weighing the evidence presented, this Bureau must first determine or make a finding on the similarity or dissimilarity of the two marks. The marks are shown below:


Petitioner's trademarks

EVEX BY KRIZIA

Respondent-Registrant's trademark

As can be readily observed with a side-by-side comparison of the competing marks, Respondent-Registrant's mark EVEX BY KRIZIA is confusingly similar to Petitioner's KRIZIA AND K DEVICE mark. Even with the presence of accompanying words EVEX and BY, to the Bureau's mind, top of the mind recall would be the word KRIZIA. The distinctive feature of Petitioner's mark is the word KRIZIA not the K DEVICE, which word was appropriated by the Respondent-Registrant. Thus, EVEX BY KRIZIA is confusingly similar to Petitioner's KRIZIA AND K DEVICE mark. Because the Respondent-Registrant's trademark registration covers goods that are similar and/or closely related to the Petitioner's, particularly, clothing under Class 25 and bags under Class 18, it is likely that the consumers will have the impression that these goods originate from a single source or origin. The confusion or mistake would subsist not only on the purchaser's perception of goods but on the origin thereof as held by the Supreme Court, to wit:

Callman notes two types of confusion. The first is the confusion of goods in which event the ordinary prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other. In which case, defendant's goods are then bought as the plaintiff's and the poorer quality of the former reflects adversely on the plaintiff's reputation. The other is the confusion of business. Here, though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff and the public would then be deceived either into that belief

or into belief that there is some connection between the plaintiff and defendant which, in fact does not exist.⁶

Public interest therefore requires, that two marks, identical to or closely resembling each other and used on the same and closely related goods, but utilized by different proprietors should not be allowed to co-exist. Confusion, mistake, deception, and even fraud, should be prevented. It is emphasized that the function of a trademark is to point out distinctly the origin or ownership of the goods to which it is affixed; to secure to him, who has been instrumental in bringing into the market a superior article of merchandise, the fruit of his industry and skill; to assure the public that they are procuring the genuine article; to prevent fraud and imposition; and to protect the manufacturer against substitution and sale of an inferior and different article as his product.⁷

Records show that Respondent-Registrant's filing of its trademark application for EVEX BY KRIZIA on 01 December 2011 preceded the Petitioner's trademark application (27 February 2012). In this regard, this Bureau emphasizes that it is not the application or the registration that confers ownership of a mark, but it is ownership of the mark that confers the right of registration. The Philippines implemented the World Trade Organization Agreement "TRIPS Agreement" when the IP Code took into force and effect on 01 January 1998. Art 16(1) of the TRIPS Agreement states:

1. The owner of a registered trademark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. The rights described above shall not prejudice any existing prior rights, nor shall they affect the possibility of Members making rights available on the basis of use.

Clearly, it is not the application or the registration that confers ownership of a mark, but it is ownership of the mark that confers the right to registration. While the country's legal regime on trademarks shifted to a registration system, it is not the intention of the legislators not to recognize the preservation of existing rights of trademark owners at the time the IP Code took into effect.⁸ The registration system is not to be used in committing or perpetrating an unjust and unfair claim. A trademark is an industrial property and the owner thereof has property rights over it. The privilege of being issued a registration for its exclusive use, therefore, should be based on the concept of ownership. The IP Code implements the TRIPS Agreement and therefore,

⁶Converse Rubber Corp. v. Universal Rubber Products, Inc. et. al., G.R. No. L-27906, 08 Jan. 1987.

⁷*Pribhdas J. Mirpuri v. Court of Appeals*, G.R. No. 114508, 19 November 1999, citing *Ethepe v. Director of Patents, supra, Gabriel v. Perez*, 55 SCRA 406 (1974). See also Article 15, par. (1), Art. 16, par. (1), of the Trade Related Aspects of Intellectual Property (TRIPS Agreement).

⁸See Sec. 236 of the IP Code.

the idea of "registered owner" does not mean that ownership is established by mere registration but that registration establishes merely a presumptive right of ownership. That presumption of ownership yields to superior evidence of actual and real ownership of the trademark and to the TRIPS Agreement requirement that no existing prior rights shall be prejudiced. In *Berris v. Noroy Abyadang*⁹, the Supreme Court held:

The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. Section 122 of the R.A. 8293 provides that the rights in a mark shall be acquired by means of its valid registration with the IPO. A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. R.A. 8293, however, requires the applicant for registration or the registrant to file a declaration of actual use (DAU) of the mark, with evidence to that effect, within three (3) years from the filing of the application for registration; otherwise, the application shall be refused or the mark shall be removed from the register. In other words, the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, by proof of the nullity of the registration or of non-use of the mark, except when excused. **Moreover, the presumption may likewise be defeated by evidence of prior use by another person, i.e., it will controvert a claim of legal appropriation or of ownership based on registration by a subsequent user. This is because a trademark is a creation of use and belongs to one who first used it in trade or commerce.** (Emphasis and underscoring supplied)

In this instance, the Petitioner proved that it is the originator and prior user of the contested mark. Although Petitioner's registration (Certificate of Registration No. 4-1988-67141) was cancelled as of August 29, 2010 for failure of Petitioner to file the Affidavit of Use/Non-Use for the 10th Anniversary, Petitioner continued to use the mark and did not abandon her rights over the mark KRIZIA. Generally, abandonment means the complete, absolute or total relinquishment or surrender of one's property or right, or the voluntary giving up or non-enjoyment of such property or right for a period of time which results in the forfeiture or loss thereof. It requires the concurrence of the intention to abandon it and some overt acts from which it may be inferred not to claim it anymore.¹⁰ To work abandonment, the disuse must be permanent and not ephemeral; it must be intentional and voluntary, and not involuntary or even compulsory. There must be a thorough ongoing discontinuance of any trade-mark use of the mark in question.¹¹ Applying the said concept to ownership or registration of trademarks, in order for a trademark registration to be considered as abandoned, the owner/registant must relinquish or voluntarily surrender its rights over the trademark. There was no overt act from which it can be inferred that Petitioner abandoned her right over the mark KRIZIA. In fact, to ensure continuity of its registration and to prove that Petitioner Evelyn C. Alandy-Dy is the prior user of the

⁹ G.R. No. 183404, 13 Oct. 2010.

¹⁰ Agpalo, Ruben E., *Legal Words and Phrases*, 1997 Ed., page 1.

¹¹ *Philippine Nut Industry vs. Standard Brands, Incorporated, Et. al.*, G.R. No. L-23035. July 31, 1975 citing *Callman, Unfair Competition and Trademark*, 2nd Ed., p. 1341)

trademark KRIZIA in the concept of an owner, Petitioner filed application for registration of the mark KRIZIA in February 27, 2012 bearing Application No. 4-2012-002397. In contrast, the Respondent-Registrant despite the opportunity given, did not file an Answer to defend its trademark registration and to explain how it arrived at using the mark EVEX BY KRIZIA which is confusingly similar to Petitioner's.

Based on the foregoing and considering that Petitioner is the originator and prior user of the KRIZIA mark, this Bureau resolves to grant Petitioner's petition to cancel Certificate of Registration No. 4-2011-014341 for the mark "EVEX BY KRIZIA" for use on "handbags; boston bags; shoulder bags; business card cases; clutch bags; tote bags; credit card cases; vanity cases (not fitted); key cases [leatherware]; wallets; umbrellas; clothing for domestic pets; carry on bags; traveling trunks" under Class 18 and "men's suits; ladies' suits, pants and rain coats; cardigans; sweaters; trousers; skirts; men's wear; jackets; blouses; polo shirts; tee-shirts; jeans; sweat shirts; one-piece dress; coats; scarves [scarfs]; shawls; mufflers; neckties; socks and stockings; stockings; tights; blouson; swimsuits; underwear [underclothing]; pajamas; headgear for wear; children's wear; bandanas [neckerchiefs]; gloves [clothing]; belts for clothing; garters; sock suspenders; waistbands for clothing; suspenders [braces]; men's shoes; ladies' shoes; children's shoes; boots; sandals" under Class 25.

WHEREFORE, premises considered, the instant Petition for Cancellation is hereby **GRANTED**. Accordingly, Certificate of Registration No. 4-2011-014341 issued on 26 July 2012 for the trademark "EVEX BY KRIZIA" for use on "handbags; boston bags; shoulder bags; business card cases; clutch bags; tote bags; credit card cases; vanity cases (not fitted); key cases [leatherware]; wallets; umbrellas; clothing for domestic pets; carry on bags; traveling trunks" under Class 18 and "men's suits; ladies' suits, pants and rain coats; cardigans; sweaters; trousers; skirts; men's wear; jackets; blouses; polo shirts; tee-shirts; jeans; sweat shirts; one-piece dress; coats; scarves [scarfs]; shawls; mufflers; neckties; socks and stockings; stockings; tights; blouson; swimsuits; underwear [underclothing]; pajamas; headgear for wear; children's wear; bandanas [neckerchiefs]; gloves [clothing]; belts for clothing; garters; sock suspenders; waistbands for clothing; suspenders [braces]; men's shoes; ladies' shoes; children's shoes; boots; sandals" under Class 25, is hereby **CANCELLED**. Let the filewrapper of the subject trademark registration be returned, together with a copy of this Decision, to the Bureau of Trademarks for information and appropriate action.

SO ORDERED.

Taguig City, 27 APR 2017.


Atty. JOSEPHINE C. ALON
Adjudication Officer, Bureau of Legal Affairs